The cases of *O'Neale* v. *Long*, 4 Cranch 60, and of *Harper* v. *The State*, 7 Blkf. 61, if to be sustained, must rest on the fact that a perfect instrument had been delivered by the original sureties, fully executed and filled up, and that the names of other sureties were afterwards inserted in the body of the instrument without the consent of such original sureties. Here the space was left blank for the very purpose of inserting the names of all who might sign the bond.

The name of Grinkemeyer, however, was forged to the bond; but this was the last name signed except that of Witt, and as the signatures preceding Grinkemeyer were in no way procured by the forgery, they cannot be released thereby. The supreme confidence evinced by Witt in "county papers" will relieve him from any suspicion of having been influenced to sign by any preceding names. Indeed, there are cases which would hold him as affirming the genuineness of the preceding signatures: *York Co. M. F. Ins. Co.* v. *Brooks*, *supra*; *Terry* v. *Hazlewood*, 1 Duvall (Ky.) 104.

The former decision in this case in 22 Ind. 399, is overruled for the reasons given in *Deardorff* v. *Foresman*, *Blackwell* v. *The State*, *Webb* v. *Baird*, *supra*, and by the decision herein. It should have been regarded by our courts as overruled by the first two cases cited.

The judgment is reversed, with costs, and the cause remanded for a new trial.

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*United States Circuit Court, District of Connecticut.*

SEMMES, ADMINISTRATOR OF LUCKETT, *v.* CITY FIRE INSURANCE COMPANY.

The late rebellion was such a war as suspended the right of a citizen of Mississippi to sue on a policy of insurance in a Connecticut company.

In addition to this consequence of a state of war, the right to sue on such a policy was suspended by the Proclamation of the President, of August 16th 1861.

Where a policy contained an express provision that in any action under it commenced more than a year from the time of loss, the lapse of time should be *conclusive evidence* against the validity of the claim, the period of the war must be omitted in computing the year.

The condition of war existed as regards the state of Mississippi, at least from 16th August 1861, when the President, in pursuance of the Act of Congress of July

13th 1861, declared that state in insurrection. Whether the war commenced, in contemplation of law, before that date, not decided.

The legal period of the termination of the war depends not on the continuance or cessation of active hostilities, but on the acts of the departments of the government to which political powers are intrusted. The Proclamation of the President of June 13th 1865, removing the restrictions on trade as to the states theretofore in insurrection, was a valid act of recognition by the executive department of the government of the termination of the war, and the right of plaintiff in this action, to sue, revived from that date.

THIS was a suit on a policy of insurance against fire issued to William R. Luckett, of Mississippi, dated August 3d 1860, upon a building situated at the Artesian Springs, Madison county, in that state. It was conceded that a total loss occurred on the 5th of January 1861, and during the life of the policy,—that the assured subsequently died,—and that the defendants are liable to his administrator in this suit, unless the right to recover is barred by lapse of time.

Suit was commenced October 31st 1866, and defendants pleaded the following condition of the policy: "It is furthermore expressly provided, that no suit or action of any kind against said company, for the recovery of any claim upon, or by virtue of this policy, shall be sustainable in any court of law or chancery, unless such suit or action shall be commenced within the term of twelve months next after any loss or damage shall occur; and in case any such suit or action shall be commenced against said company after the expiration of twelve months next after such loss or damage shall have occurred, the lapse of time shall be taken and deemed conclusive evidence against the validity of the claim thereby so attempted to be enforced."

Plaintiff replied (among other matters not important in the view taken by the court), that the assured, down to the time of his death, was a resident and citizen of the state of Mississippi, and that the plaintiff, during his whole life, has been and still is a resident and citizen of the same state. That from April 15th 1861, to April 2d 1866, a state of war between the so-called Confederate States, including the state of Mississippi, and the United States, existed, whereby all right of the assured during his life, and of his administrator since his death, to maintain any action against the defendants, was by law suspended, during all that time.

This replication the defendants have traversed.

By stipulation the case was tried by the court instead of the jury.

*William Hamersley & H. K. W. Welch*, for plaintiff.

*C. R. Chapman* and *A. P. Hyde*, for defendants.

SHIPMAN, J.—[After stating the facts and disposing of some preliminary questions.]—The replication sets up the late rebellion, and alleges that a state of war existed between the organization known as the Confederate States, including the state of Mississippi, and the United States, from the 15th of April 1861, to the 2d of April 1866, whereby it is claimed that this contract and all right to sue upon it was, during all that time, suspended. There is no allegation that the courts of Mississippi, or the national courts in that state, were closed for any specific length of time, nor that the plaintiff, or his intestate, labored under any personal disability arising out of his actual participation in the war, nor that he was under the control of any *vis major*, beyond what the law implies from the state of war. The whole question, therefore, turns on the legal consequences of the war in their operation on this contract, and the length of time these consequences continued.

It is, of course, conceded that a state of war, recognised as such by and between the belligerent parties, suspends all contracts in existence between the citizens of the respective belligerents at the time the war commences. The authorities are uniform on this subject. The general rule is well stated by Mr. Justice NELSON in the *Prize Cases*, 2 Black 687. "The legal consequences resulting from a state of war between two countries at this day, are well understood, and will be found described in every approved work on the subject of international law. The people of the two countries become immediately the enemies of each other,—all intercourse, commercial or otherwise, between them unlawful,—all contracts existing at the commencement of the war suspended, and all made during its existence utterly void." This doctrine has been repeatedly recognised and applied to our late civil war by the courts of this country, both state and national: *Hanger* v. *Abbott*, 5 Wall. 532; *Tucker* v. *Watson*, 15 Am. Law Reg. 22; *Jackson Ins. Co.* v. *Stewart*, Id. 732; *Conn. Mut. Life Ins. Co.* v. *Hall*, 16 Id. 606.

It is equally well settled that, upon the termination of the war, obligations contracted before its commencement, between the respective subjects, though the remedy for their recovery is suspended during the war, are revived: Lawrence's Wheaton, p. 877, and the cases above cited. In *Hanger* v. *Abbott*, and *Jackson Ins. Co.* v. *Stewart*, this doctrine was applied to the Statutes of Limitation. In the former case, Mr. Justice CLIFFORD, speaking for the court, says: "When a debt has not been confiscated, the rule undoubtedly is that the right to sue revives on the restoration of peace, and Mr. Chitty says that with the return of peace we return to the creditor the right and the remedy. Unless we return the remedy with the right, the pretence of restoring the latter is a mockery, as the power to exercise it with effect is gone by lapse of time during which both the right and the remedy were suspended."

Applying these doctrines to the present case, it follows that the war, in which the people of Mississippi on one side, and those of Connecticut on the other, participated, suspended this contract with all its incidents, including the condition set up in bar of this action, and all rights of action under it. In view of the result to which I have come, it is unnecessary to determine the precise date of the beginning of the war, when this suspension commenced. It is immaterial whether we take the 15th of April, as stated in the replication, the date of the President's proclamation calling for volunteers; or the 19th of April, when by proclamation he declared that an insurrection had broken out in certain states, including Mississippi, and declared his purpose to blockade their ports; or the 16th of August 1861, when in pursuance of the Act of Congress of July 13th 1861, he, by proclamation, formally declared the inhabitants of those states in insurrection, and announced the prohibition of all commercial intercourse between them and the inhabitants of the other parts of the United States. It is conceded on all hands that at least from August 16th 1861, this contract was suspended, both by the inevitable legal effect of the state of war, and by the interdiction of intercourse announced by the proclamation of that date. The rules of public law, as well as the Act of Congress referred to, lead to this result. Therefore, as the twelve months within which a suit could be legally brought on this policy had not expired when the war commenced, and thus imposed a disability on the assured, it becomes

essential to determine whether this disability has been removed, and if so, when that removal took place. It is conceded in this case that the disability has been removed, and the right to sue revived. The plaintiff not only admits, but must maintain, that this took place before October 31st 1866, when he brought this suit. Otherwise he could have no standing in court. As the contract and all remedies under it were absolutely suspended by the war, no suit could have been brought while that suspension continued. But the plaintiff goes further, and alleges, in effect, in his replication, that the war ended, so far as the state of Mississippi and its inhabitants are concerned, on the 2d of April 1866, the date of the President's proclamation to that effect, and not before. On the other hand, the defendants insist that it ended as early as June 13th 1865, when the President, by proclamation, appointed a provisional governor over the state of Mississippi, and directed the United States district judge for that judicial district to proceed to hold the courts.

Now, it must be remembered, that though this was a war between belligerents, attended while it continued by those legal consequences which public law always attaches to all legitimate warfare, yet it was a civil war in which the revolted party was defeated, and its organization as a *de facto* government under the name of the Confederate States of America, politically annihilated. No treaty of peace in the ordinary sense of that term could be negotiated, as but one of the parties which had waged the war was in existence as a treaty-making power at its close. Therefore no such treaty has drawn the line where the war ended, and suspended contracts revived. We must therefore look to the acts of the only surviving party to ascertain when those disabilities, legally imposed by the state of war, ceased. It is hardly necessary for me to say that the principle here stated lends no support to the doctrine put forth in some quarters, and which that distinguished jurist, Mr. Justice SPRAGUE, characterized as a "grave and dangerous error,"—that the suppression of the rebellion conferred upon the United States the rights of conquest,—the right to treat the states included in the rebellion as foreign territory acquired by arms, and permanently divest them and their inhabitants of all political privileges: Sprague's Decisions, II., p. 147. That notion has nothing to do with the point now under consideration. The United States, in suppressing the rebellion, destroyed the political

organization known as the Confederate States, and not the individual states as political communities. But though the states remained after the contest ended, the belligerent power known as the Confederate States which had represented them in the war, disappeared at its close. Neither of the states which remained had the power, or attempted, to negotiate a treaty of peace with the United States. In determining, therefore, when the rights, suspended by the war, revived, we must look to the action of the only power in existence which could effectually deal with that subject. This power was the government of the United States.

It is a settled rule with the courts of the United States, in ascertaining whether or not war exists, to look to the action of those departments of the government to which that subject is confided by the Constitution. Courts never inquire, when investigating questions of this character, when active hostilities ceased. The termination of war, and the establishment of the relations of peace, are political acts, to be performed exclusively by the departments of the government to which political powers and duties are intrusted. The action of these departments, when within the authority conferred by the Constitution, is conclusive and binding on the courts as well as citizens. When war has existed between the United States and a foreign country, its termination is easily ascertained by a reference to the treaty of peace which follows it, and which is consummated by the President acting by and with the advice and consent of two-thirds of the Senate. As no such treaty did, or could, mark the close of this civil war, we must look to the action of the President, or Congress, or both, and from that action ascertain when the war ended, and when the legal consequences which flowed from it ceased to act in any given case.

I have already shown that by the rules of public law universally recognised among civilized nations, as well as by the decisions of our own courts, the existence of this war suspended all contracts between the citizens of the respective belligerents, entered into before it commenced. It rendered, for the time being, all commercial intercourse between the citizens of two sections unlawful, and converted them into enemies. But in addition to this, Congress passed an act, July 13th 1861, authorizing the President in certain cases, by proclamation, to declare the inhabitants of a state in insurrection against the United States, where-

upon all commercial intercourse by and between the same and the citizens thereof and the citizens of the rest of the United States should become unlawful. In pursuance of this statute the President, on the 16th of August 1861, issued his proclamation declaring the inhabitants of certain states, including Mississippi, in insurrection against the United States. By force of this proclamation, then, and the statute authorizing it, as well as by the legal effect of the war then existing, all pre-existing contracts between the people of the respective belligerents, including the right to enforce them by judicial proceedings, were thenceforth suspended. In progress of time hostilities ceased, and the executive department of the United States commenced a series of acts recognising a change in the relations of the government towards the inhabitants of the states lately in rebellion. May 22d 1865, the President issued a proclamation raising the blockade of most of the closed ports, and removing "all restrictions upon trade heretofore imposed in the territory of the United States east of the Mississippi river, save those relating to contraband of war, to the reservation of the rights of the United States to property purchased in the territory of an enemy, and to the 25 per cent. upon purchases of cotton." The same proclamation declared that all provisions of the internal revenue law should be carried into effect by the proper officers.

May 29th 1865, the President proclaimed amnesty and pardon to all persons in the late revolted states, except certain specified classes, with restoration of all rights of property, except slaves, and in cases where legal proceedings had been commenced for the confiscation of property of persons engaged in rebellion, on condition that they should take and subscribe a certain oath.

On the same day he issued a proclamation appointing a provisional governor for North Carolina, and prescribing his duty and authority.

June 13th 1865, he issued a similar proclamation relating to Mississippi.

On the same day he issued a proclamation appointing a provisional governor over Tennessee, and declaring, among other things, "that all restrictions upon internal, domestic, and coastwise intercourse and trade, and upon the removal of the products of states heretofore declared in insurrection, reserving and excepting only those relating to contraband of war, as hereinafter recited, and

also those which relate to the reservation of rights of the United States to property purchased in the territory of an enemy, heretofore imposed on the territory of the United States east of the Mississippi river, are annulled, and I do hereby direct that they be forthwith removed." The other provisions of this proclamation it is not necessary to notice here.

April 2d 1866, the President issued a proclamation formally declaring the insurrection that had existed in certain states, including Mississippi, at an end, and to be thenceforth so regarded.

It should be remarked that there was no executive declaration that the insurrection was ended, before that of April 2d 1866, in any state except Tennessee. On the 13th of June 1865, he did, in the proclamation already cited, declare it terminated in the last-named state. In a proclamation of the same date relating to Missssippi, and in the one of May 29th 1865, relating to North Carolina, he spoke of the armed forces of the rebellion as having been "almost entirely overcome."

We must now inquire into the legal character of the proclamations of the President restoring commercial intercourse to and with the states which had been engaged in the rebellion, and the rest of the United States. And, first, as to his authority to issue such proclamations. I think there can be no doubt on that point. The Supreme Court of the United States recognised the power of the President to, in effect, declare the inhabitants of the disaffected states in a state of insurrection as early as April 19th 1861, when he set on foot the blockade of certain ports, including those in Mississippi (*The Prize Cases*, 2 Black 670). In the opinion in these cases, Mr. Justice GRIER, speaking for a majority of the court, says:—"Whether the President, in fulfilling his duties as commander-in-chief, in suppressing an insurrection, has met with such armed hostile resistance, and a civil war of such alarming proportions, as will compel him to accord to them the character of belligerents, is a question to be decided *by him*, and this court must be governed by the decisions and acts of the political department of the government to which this power was intrusted. He must determine what degree of force the crisis demands. The proclamation of blockade is itself official and conclusive evidence to the court that a state of war existed which demanded and authorized a recourse to such a measure, under the peculiar cir-

cumstances of the case." There had been no declaration of war. Congress can alone declare war, but the court held in the same cases that that body could not declare war against a state, or any number of states, by virtue of any clause in the Constitution. It also held that the President had no power to declare or initiate a war either against a foreign nation, or a domestic state. It, however, distinctly decided that the President could, and did, recognise a state of war as actually existing, and that the courts were bound to accept such recognition of the fact as conclusive. Of course they must recognise the legal consequences which flow from the state of war. It would seem to follow that if the President has the power to recognise the state of war as an existing fact, and this recognition is binding on the courts, he must equally have the power to recognise a state of peace as an existing fact, and the courts are equally bound by such recognition. Especially would this seem to be the case in this civil war, where no formal treaty of peace could mark the line where war ended and peace commenced, and where there was no declaration of the legislature inconsistent with the proclamation of the Executive.

But whether this is the true doctrine or not, it must be remembered that the Act of Congress of July 13th 1861, authorized the President to declare certain states in insurrection, whereupon all commercial intercourse was to become unlawful. On the 16th of August following he issued such a proclamation. From that time forward the interdiction of commercial intercourse had the double sanction of public law and a special Act of Congress operating from the date of the proclamation. Now, it may be said with some force, that inasmuch as commercial intercourse became unlawful under this Act of Congress, *ipso facto*, on the declaration of the President of the fact of insurrection, it must have continued unlawful until the insurrection was by him, or Congress, declared ended; and that, therefore, he could not legalize free intercourse between the citizens of the two sections, without first declaring the rebellion suppressed. But this would be a very narrow and technical view to take of a great public question, relating to an anomalous condition of public affairs, and bearing upon interests of infinite diversity and great magnitude. The Act of July 13th 1861, by its express terms, was to be operative as an interdiction of intercourse, only through a proclamation of the President. Congress left it to his discretion to put

the interdiction in force. I think, by fair implication, it left with him the power to withdraw it. There were reasons of the highest public import why this power should remain with him. The war had commenced during a recess of Congress. It was necessary for the President to act promptly, and he called for troops, and set on foot a blockade some time before Congress could assemble. Hostilities might cease, and the war be substantially terminated, also, during a recess of Congress, when prompt action by the President might be of the highest importance both to our foreign and domestic commerce. This power of the Executive to restore pacific intercourse seems to have been practically conceded without dissent from any quarter. Neither Congress, nor the Executive, nor the people have acted upon the assumption that intercourse between the people of the two sections in private civil affairs has been unlawful since June 13th 1865. On the contrary, by the common consent of all departments of the government, such intercourse was substantially free and unrestrained after that date, as well as after the 2d of April 1866. Business began to seek its old channels; new contracts were made; old ones litigated and enforced in the courts of both sections, and money invested at the South in various enterprises. No doubt would ever have arisen as to the validity of the President's proclamation removing all restrictions upon ordinary pacific intercourse between the people, but for the subsequent struggle between Congress and the executive department as to the political status of the Southern States. But that controversy has no proper relation to the question now under consideration. Congress has never, even by implication, declared commercial and pacific intercourse of any kind unlawful, since the President assumed to remove the restriction, June 13th 1865. On the contrary, its silence on this subject, when legislating on the purely political questions involved in what is called "Reconstruction," supports the inference that the ordinary civil pursuits of the people, and all the rights incident to them, including the right to free intercourse between the citizens of both sections, and the right to resort to legal civil remedies, were considered by Congress itself as no longer under the ban of war. I am, therefore, satisfied that the authority of the President to issue the proclamation of June 13th 1865, restoring free intercourse, was full and ample,

and that its exercise has been acquiesced in by the national legislature.

We are next to consider what was the legal effect of that proclamation. Its language has already been cited. Beyond all question, it embraces all contracts thereafter to be made, and delivers them from the invalidating effect of public law, as well as from the effect of the statute of July 13th 1861, and the proclamation made in pursuance thereof, August 16th following. Such contracts being valid, the right to enforce them in the courts necessarily followed. A citizen of one section could sue a citizen of the other on such a contract without having his suit defeated on the ground that it was invalid either by public or statute law; or abated under the plea of alien enemy. Both the right and the remedy on such a contract were complete.

The question then arises, in what condition were the numerous contracts existing when the war commenced, left by the proclamation of June 13th 1865? Were they still suspended, and the parties without any right to enforce them? Undoubtedly unpaid debts contracted before the war could have been lawfully paid by citizens of one section to those of the other, at any time after the date of this proclamation. This would be exercising one of the privileges of "domestic intercourse," restored in express terms by that proclamation. It would seem to follow that the right to enforce payment through ordinary legal remedies must have been restored also. It would be absurd to contend that the proclamation removed the prohibition to enter into new contracts, and left those entered into before, and existing at, the commencement of the war, suspended. Such a distinction would be unjust as well as absurd. It would be a distinction between rights of the same class, and could rest upon no principle of natural justice, good sense, or sound policy. No such construction should be given to a state paper like this proclamation. It was made in the interests of peace, and its ordinary beneficent pursuits, and in furtherance of the rights of the people of both sections of a common country. No possible advantage in the way of convenience, interest, or security to the public or to individuals, consistent with justice, requires that its operation and legal effect should thus be contracted. It should, therefore, receive a liberal rather than a narrow and technical interpretation.

It follows from these principles, that the contract upon which this suit is founded, though suspended during the war, while intercourse between the citizens of the belligerent sections was unlawful, revived on the 13th of June 1865, and from that date was in full force. From that time there has been no legal obstacle to its enforcement. Whether Mississippi was without civil tribunals during any portion of the time since the contract revived, is neither averred in the replication, nor was it proved on the trial. This court cannot take judicial knowledge of that point. But it is immaterial. The plaintiff could have resorted to the state tribunals of Connecticut, or to this court, at any time since his appointment as administrator. Not having brought his suit within the time limited by the policy, exclusive of the whole period of disability, the plea in bar is a conclusive answer to his right to recover. Judgment must, therefore, be entered for the defendants.

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*Supreme Court of Pennsylvania.*

## SCHAFER *v.* THE FARMERS' AND MECHANICS' BANK OF EASTON.

B. made a note payable to J. S. endorsed it: afterwards J. endorsed it and it was discounted by a bank for J. *Held*, that S. was not liable either to the bank or to J. without evidence *dehors* that he had assumed the liability.

The mere endorsement in such case did not authorize the holder to write a guaranty over it, but a special original agreement might be established by proof.

The payee, who was also an endorser, was incompetent to testify to such a special agreement of the irregular endorser.

The endorsement is not a note in writing, as required by the act of April 26th 1855 (Frauds).

The proof of a collateral liability for the debt of the maker different from that which the endorsement imports cannot be made by parol.

*Taylor* v. *McCune*, 1 Jones 460, and *Keyner* v. *Shower*, 1 Harris 446, remarked on.

ERROR to the Court of Common Pleas of *Northampton county.*

This was an action of *assumpsit* by The Farmers' and Mechanics' Bank of Easton as holder, against Solomon Schafer, as endorser of the following note:—